BRIEF OF RESPONDENT.

ARGUMENT.

Counsel for Petitioner urge two points in support of the Petition for certiorari. First, that the United States Circuit Court of Appeals for the Seventh Circuit erred in reversing the judgment of the District Court for the Northern District of Illinois, Eastern Division, which judgment was based upon the verdict of a jury and second, that the United States Circuit Court of Appeals erred in remanding the case to the District Court with instruction to "dismiss on the merits".

In Petitioner's brief a statement of the facts of the case is set out (Pages 7-11). However, the facts are not abstracted fully enough so that this Court may readily determine the basis for the Circuit Court of Appeals in reversing the judgment entered below and directing that the suit be dismissed on its merits. The plaintiff was a customer in the defendant's store. The store was a large one consisting of two sales floors, a basement and the first and second floor. Leading from the main first floor to the basement were stairs, the steps of which were a composition of terrazo with an abrasive mixed in (Rec. 103). The stairs were divided into two parts with brass rails running down the center (Rec. 89). There were also hand rails on either side for persons going up or down the stairs. The store is a large one and during the noon hour such as on the day of the accident, an average of two thousand people came in and went out of the store daily (Rec. 104). The plaintiff, Dorothy Brunet, with a friend, entered the store at the noon hour intending to

have lunch. It was snowing outdoors and plaintiff had rubber galoshes on (Rec. 39); they descended the stairs to the basement. Plaintiff had hold of the banister rail with her right hand and as she got down two or three stairs she noticed that the stairs were very slippery and she held onto the banister and proceeded down (Rec. 39). When she got down four or five stairs and just as she was stepping on one of the stairs her foot slipped out from under her, she was unable to brace herself and she slid down the stairs to the landing. Plaintiff testified the stairs were wet and muddy, had dirty melted snow on them and that they were very slippery to walk on and in response to a direct question testified that the cause of her slipping was "the slipperiness of the stairs and the wet and melted snow on the stairs" (Rec. 40).

Petitioner complains of the Circuit Court of Appeals and seeks to base her complaint on the ground that the Circuit Court of Appeals for the Seventh Circuit was obliged to follow the law of Illinois as promulgated by the Supreme Court of Illinois but failed in this and rather followed the opinion of one of the Appellate Courts of Illinois, namely in the case of *Murray* v. *Bedell Co.*, 256 Ill. App. 247.

A reading of the opinion of the Circuit Court of Appeals, 115 Fed. (2d) 713-715, clearly shows that such is not the fact. The court concluded that:

> "After a careful reading of the record in this case, we are convinced that it does not disclose such negligence on the part of appellant, and freedom from negligence on the part of appellee, as to justify the judgment entered in favor of the latter, and that appellant's motion for directed verdict should have been sustained."

The court comments from two Illinois Appellate Court

decisions, then quotes from the testimony of the plaintiff, saying:

> "From the testimony of the plaintiff it is apparent that the danger, if any, was clearly evident to her, as well as the defendants, and that she was aware of the condition and of the possibility of sustaining a fall before she undertook to pass over and along the floor space of the vestibule."

The court cited further from the Illinois Appellate cases and concluded by saying:

> "This conclusion is consistent with the general rule, as stated by the Illinois Supreme Court in *Calvert* v. *Springfield Light Co.*, 231 Ill. 290."

Petitioner's argument seems to be that all questions of negligence and contributory negligence must be decided by a jury, and that there can be no contrary finding to a verdict of a jury.

The Circuit Court of Appeals in its opinion said:

> "It is obvious in the case at bar that nothing was hidden from appellee, that she was well aware of the slippery and wet condition of the stairway as she started to descend it. She stated that she took hold of the banister as she started down because she realized that there was a possibility of falling. She presumed that her own galoshes were wet as she entered the store, having walked through the slush and snow, and she could see that there was slush and snow on the stairs tracked in by other people. * * * We think the facts as proved by appellee fail to disclose such a lack of reasonable and ordinary care in the maintenance and supervision of the premises as to render appellant liable for her accident."

CONCLUSION.

Neither of the points raised by Petitioner is new or is of such importance as to require review by this Court. Both have been definitely passed upon heretofore.

It is respectfully submitted that the Petition for writ of certiorari be denied.

Respectfully submitted,

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